Central Law Journal.

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ANNOUNCEMENT.

As the present volume of the CENTRAL LAW JOURNAL is drawing to a close, we desire to make certain announcements for the new year.

We take great pleasure in announcing that the editorial staff of the CENTRAL LAW JOURNAL has been augmented by the addition of Mr. William A. Gardner, formerly a member of one of the largest law firms in Chicago, but who recently removed to Springfield, Missouri, to take care of large interests there and to improve the health of his family. He is now permanently located in St. Louis, and will assume the complete direction of the CENTRAL LAW JOURNAL as Editor in Chief. Mr. Alexander H. Robbins, the former editor, is still retained as managing editor. Mr. Robbins will still wield the pen, both in the preparation of editorials and annotations. To fully carry out our earnest purpose to make the CENTRAL LAW JOURNAL the most original as well as the most valuable law journal in the United States it has become absolutely necessary to maintain a competent editorial staff employed to give their whole time to the interests of our subscribers.

Another gratifying announcement, from the publisher's standpoint at least, is the constant increase in our subscription list. This is due, in large measure, to the kind words of testimony and effort put forth by some of our enthusiastic subscribers. We desire here to publicly acknowledge our gratitude to certain subscribers in North Dakota, Iowa and South Carolina, who by their own efforts, without suggestion from us, added so many names to our list of subscribers. We shall be glad to make it a matter of profit as well as of gratitude to those of our subscribers who think well enough of the CENTRAL LAW JOURNAL to introduce it into other offices by their own efforts.

We contemplate no change in the different departments of the CENTRAL LAW JOURNAL. The plan of the JOURNAL is that conceived at the time of its origin by the Hon. John F. Dillon, and so well is that plan appreciated that any attempt to change it meets with instant disapproval from our subscribers. Our purpose next year therefore will be to increase the value and efficiency of the CENTRAL LAW JOURNAL along the same lines so long familiar to the profession.

We have one request to make of our subscribers,—that they keep us advised of interesting points of law arising in their practice. Send us the query hypothetically propounded, or better still send the query and your view of the proper solution of the question of law involved. Contributions of this character will entail little labor on the part of each correspondent but would in the aggregate be of great value to the profession in pointing the way to a solution of questions of law on which the books seem to be silent.

REPEAL OF ORDINANCES BY STATUTE.

It is a general rule that municipal ordinances must not be inconsistent with the general statutes of the state. How far the cases go in the determination of what amounts to irreconcilable inconsistency we shall, at some future time, endeavor to indicate.

The following question recently arose in a well known city court: Certain ordinances had been long in force regulating the sale and inspection of milk. Thereupon a state statute was passed creating a dairy commissioner, regulating the sale, and fixing the standards for dairy products, including milk. The state statute further attempted to repeal "any and all laws and parts of laws of whatsoever kind or nature inconsistent with the provisions of this act," and closed with an emergency clause. At the time this statute took effect a large number of prosecutions were pending under the city ordinances, and the defendants contended that the statute repealed the ordinances both expressly and by necessary implication; that the ordinances being repealed, the prosecution must fail. It was true, they said, that there was a city ordinance providing that "no offense committed and no fine, forfeiture or penalty incurred, previous to the repeal of any ordinance, shall be affected or discharged by such repeal;" but the municipal assembly could not validly prescribe as

to the effects of a legislative repeal; the municipal assembly could not bind the legislature. It was further true, that a state statute provided that no repeal of a statute should affect any offense previously committed or penalty incurred; but this had no application to ordinances, because an ordinance is not a statute; citing Barton v. Gadsden, 79 Ala. 495; Rutherford v. Swink, 96 Tenn. 564, and Denning v. Yont, 62 Kan. 217. The cases did not reach the appellate court, being settled by agreement of counsel; but the argument of counsel suggests an interesting answer, which may or may not be sound.

It is settled law that the legislature cannot expressly assume the functions of the municipal assembly. It cannot directly enact an ordinance, nor can it expressly repeal one. Smith, Municipal Corp., Sec. 544. But it can legislate with supreme authority over the state, including cities; and whatever ordinance is inconsistent with the supreme law falls to the ground. This, however, is an implied repeal; and by all the authorities implied repeals are to be narrowly and strictly construed. The general rule is, further, that statutes are to be prospectively construed, as applying to the future rather than to the past. The constitution of most states prohibits retrospective legislation. Now the ordinance providing that no offense or penalty accrued under an existing ordinance, should be released by the repeal of that ordinance, is general. It forms a part of every ordinance just as much as if it were written expressly into it. That provision of the ordinance in question is not in terms attempted to be repealed. The charter of the city in this particular case conferred the implied power upon the assembly to make such a provision; and the charter is law of equal dignity with the statute.

If then the statute can only operate as an implied repeal, and an implied repeal is to be construed as narrowly as possible: and if, further, the statute is to be construed prospectively, as applying to future cases, and not to past, is it necessary to conclude that the ordinance and the saving clause thereof as to past offenses, is repealed by reason of irreconcilable inconsistency with the statute, so as to avail these defendants?

NOTES OF IMPORTANT DECISIONS.

DEED—CONSTRUCTION OF RESTRICTIONS IN A DEED.—In the case of Hemsley v. Marlborough House Co., 61 Atl. Rep. 455, decided in Court of Errors and Appeals of New Jersey recently, the court held that the restriction in a deed that no building shall be erected on the lot conveyed "more than 200 feet, without the consent of [grantor] or her heirs, beyond the souther-most boundary line of the lot of S., * * * nor within a space of 15 feet from the westerly side of * * * P. Place," means that no building shall be erected within the two limits prescribed without the consent of the grantor or her heirs. The process of the reasoning of the court is interesting in showing that though such restrictions are binding equity will relieve the parties so bound rather than allow a gross injustice to be inflicted. The court said:

"Another contention advanced by counsel for the defendant is that the defendant company had no knowledge at the time it purchased the female academy tract that these restrictive covenants in the deed to that society had been inserted in it for the benefit of the Disston Cottage property, and therefore is not affected by them. The answer to this contention seems to us to be that knowledge of this fact was not necessary in order to bind the defendant company. It had notice of the existence of these restrictions, for they appear in the direct chain of its title, and, having notice, it is chargeable with the pertinent facts which inquiry would have revealed to it—in other words, with the purpose for which these restrictions were inserted in the deed.

But although we reach the conclusion that the right to enforce these restrictive covenants against the owner of the defendant's property passed to the complainant, as the grantee of the Disston Cottage plot, we do not consider that it would be equitable at this time to grant a mandatory injunction against the defendant company, requiring it to tear down so much of its hotel building as extends beyond the prescribed lines. Apparently the violations of the restrictive covenants in this respect were accidental. No objection to this feature of its construction seems to have been made by the complainant during the process of its erection. The injury inflicted upon the complainant's property by these infractions of the covenant is almost infinitesimal, and the loss which would be entailed upon the defendant by tearing away these portions of its building would be very considerable." The fact that no objection was made while the building was in course of erection, must have been regarded as amounting to consent by the court and it would seem as though it should have said so in so many words, however the opinion did justice and that is the main thing.

LIBERTY OF CONTRACT.

1. *The Right or Liberty to Contract.*—There are certain fundamental rights of the citizen recognized in the organic law of all the states. Among these is the right to liberty, and to acquire, possess and protect property. The constitutional provision which declares that every person has an inalienable right to liberty, and to acquire, possess and protect property, guaranties to them the right to make and enforce all proper contracts, and to employ in their business such persons and such lawful means as they choose, free from restraints except such as are necessary for the common welfare.[1] "Liberty," it is said, "includes the right to make and enforce contracts, because the right to make and enforce contracts is included in the right to acquire property."[2] And again, "the right to contract a debt or other personal obligation is included in the right to liberty."[3] And "the right to a sustenance, and to acquire property and to make treaties in relation thereto, is liberty in the constitutional sense."[4] "A freeman," it has been said, "may buy and sell at his pleasure. This right is not of society, but from nature. He never gave it up. It would be amusing to see a man hunting through our law books for authority to buy or sell or make a bargain."[5] Contracts and compacts have been entered into between men and nations during all times from the earliest dawn of history. The right and liberty of contract is one of the inherent and inalienable rights of man, fully secured and protected by our constitutions.[6]

This right may be restrained only so far as it is necessary for the common welfare, and the equal protection and benefit of the people. "It must not be forgotten," to quote from an English case, "that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider that you are not lightly to interfere with this freedom of contract."[7] Free will in making private contracts, and even in greater degree in refusing to make them, is one of the most important and sacred of the individual rights intended to be protected by the constitution.[8] "Freedom of contract is unknown to primitive society, but is at once an incident, and an evidence of a relatively highly advanced civilization. The progression from the old system of rights and duties dependent upon a fixed status to the system of rights and duties arising from the free contract of the individual is a distinct social advance from one great landmark of jurisprudence to another. In a modern industrial state this freedom of individual contract, representing a long and toilsome progressive social development, becomes essential in any rational conception of individual liberty. * * * This fundamental right, however, as all other individual rights, must conform to and yield to the necessities of the social state. It is the law which gives its sanction to the obligation of the contract, and which is necessarily involved in the conception of an enforceable contract. Liberty of contract, therefore, consists in having the ability at will to make or to abstain from making a binding obligation, enforced by the sanction of the law."[9] Upon this subject a quotation from the *Irish Law Times*, which is given in the note, seems peculiarly appropriate, and at the same time to embrace about all that can properly be said on this subject.[10]

[1] State v. Bateman, 7 Ohio N. P. R. 487; Commonwealth v. Perry, 155 Mass. 117.

[2] Matthews v. People, 202 Ill. 389.

[3] Kuhn v. Common Council, 70 Mich. 534.

[4] Republic Iron, etc., Co. v. State, 160 Ind. 379.

[5] Beebe v. State, 6 Ind. 501, 512.

[6] Palmer & Crawford v. Tingle, 55 Ohio St. 423; Ritchie v. People, 154 Ill. 98; Frorrer v. People, 141 Ill. 171; Braceville Coal Co. v. People, 147 Ill. 66; Great Southern Hotel Co. v. Jones, 193 U. S. 532, 548-550; State v. Stewart, 59 Vt. 273; State v. Goodwill, 33 W. Va. 179; *In re* Jacobs, 98 N. Y. 98; Slaughter House Cases, 16 Wall. 36; Godcharles v. Wigeman, 113 Pa. St. 431; Commonwealth v. Perry, 155 Mass. 117; Williams v. Fears, 179 U. S. 270; Holden v. Hardy, 169 U. S. 366; Allgeyer v. Louisiana, 165 U. S. 778.

[7] Printing, etc., Co. v. Sampson, L. R. 19 Eq. Cases, 462, 465. Justice Shiras makes use of the above quotation in Baltimore, etc., R. R. Co. v. Voigt, 176 U. S. 498, 505.

[8] State v. Krentzberg, 114 Wis. 530, 90 N. W. Rep. 1098, 58 L. R. A. 748, 753.

[9] *Per* Frederick N. Judson, Esq., 25 Am. Law Review, 871.

[10] "Restraint of contract has, in a great majority of cases, one of three results: it leaves the persons for whose benefit it is imposed in exactly the same position as they occupied before; or, it leaves them in a worse position; or, where the proposed restraint applies to a class of persons among whom the original conditions of contracting vary, it leaves the position of some unchanged, while injuring that of others. Most cases of interference with contract fall under the latter head. Attempts to restrain contracts will, nowadays at least, be only either wholly ineffectual or partly ineffectual and partly injurious—legislative science being now, it may be hoped, sufficiently enlightened to refuse its sanction to attempts at restraint of contract of the wholly injurious order. A typical specimen of an attempt of the latter kind is afforded by the usury laws. * * * The object of these laws must be defined to be either the protection of borrowers generally, or specially the protection of improvident borrowers. So far as regards what may be called the legitimate borrower, the man in want of capital to apply to a productive purpose, it seems too clear for argument that he is best served by being allowed to borrow money at whatever rate of interest will leave him a sufficient margin of profit; and, it is easily to imagine, as Bentham did, a hypothetical but highly probable case, in which his personal inability

2. *Business Relations Must be Voluntary—Exceptions.*—"It is a part of every man's civil rights," said Judge Cooley, "that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal con-

to borrow money at five per cent and his statutory disability from borrowing it at six or seven per cent would ultimately compel him to submit to a reduction of his profits equal to a rate of ten or twelve per cent. Probably the legislators of the last century were themselves sensible to the force of this argument even while they maintained the usury laws, but they were so bent on protecting the spendthrift borrower from himself that they were willing to sacrifice the thrifty borrower to him. The paternal legislator has been distinguished in all ages by his indifference to the interests of his best conducted children. What makes the usury laws so typical a specimen of the worst kind of interference with contract is, that they not only failed to protect the class whom they were designed to protect, but actually exposed them to still greater dangers. The spendthrift, as his name almost implies, is a man of many contracts—of many improvident contracts, and legislation was dealing with only one of them. The legislature seemed to have forgotten that the spendthrift did not borrow money to look at, but to spend on the purchase of a variety of more or less useless and superfluous commodities; and where, as Bentham pertinently asked, was the reason of limiting the money dealer's profits on the commodity in which he dealt, while the dealers in every other form of commodity were allowed to make what profits they could? In the result it is clear that they would appropriate all the money-dealer's profit in excess of the legal rate of interest, and more. The less ready money the spendthrift could raise, the more and the longer credit it was necessary for him to obtain; while, on the other hand, the more and the longer credit his tradesmen were called upon to give him, the higher, naturally, was the interest they were compelled, or at any rate enabled, to charge him upon the value of his goods. We have dwelt thus long upon this now almost forgotten legislation, because it illustrates in an extreme form the almost invariable cause of the failure of all legislation in restraint of contract. Such legislation generally fails because it does not go far enough; and it does not go far enough because it cannot. It merely aims at imposing restraints upon one of many modes in which the needs of one party find satisfaction from the services of another; and it confines itself to this because it would be impossible to anticipate all the modes in which the parties can bring themselves together; and if it were possible, the attempt to intercept them all would be too intolerably oppressive even for paternal legislation. In some cases it is impossible, in these days at least, for law to advance a single step farther than the bare and necessarily idle restriction upon a single form of contract, because the very next step would bring legislation into collision with principles too firmly established to be assailed. It is easy to see how short must be the arm of a lawgiver who wishes to prohibit a particular form of contract, and yet cannot venture to touch such things as the price of commodities or the rate of wages. In many cases the first condition even of apparent success of restraining contract would depend

upon the ultimate assumption of power to fix prices or to regulate wages. * * * To sum up, legislation in restraint of contract may be resisted on two grounds—from the point of view of its economical results to the community, and from the point of view of its effect on the class for whose benefit it is designed. It ought not to be resisted from the point of view of the community, because the argument on this head can never be conclusive, and can at best only disclose a conflict of considerations which will always have different weight for different minds. It ought to be resisted from the point of view of the persons sought to be benefited, and on the ground that it will not so benefit them. It will fail to benefit them, because it will fail in the vast majority of cases to coerce those other persons upon whose coercion this benefit depends. And, finally, it will fail to coerce those persons, because the right of contract, which legislation seeks to restrict, in most cases turns out to be inseparably connected with certain other rights before which legislation is compelled to pause." 9 Irish Law Times, 525-570.

cern."[11] To enjoy his liberty to the fullest extent the citizen's business relations with others must be voluntary. To compel an individual to enter into business relations with another against his will can be justified only on the ground of public necessity. There can be no justification, however, for state interference with the business relations of persons engaged in pursuits of a purely private character. But where the business is one of a *quasi*-public character, the person who adopts and follows it, may be compelled by the state to enter into business relations with all. Thus the common carrier must carry for all; the innkeeper, so far as possible, must provide for all who come to him. The reasons for these exceptions to the general rule—that the citizen's business relations must be voluntary—define, in a way, the limitations of legislative power in dealing with other kinds of business. Common carriers, like railroads, ferries, street car companies, and the like, enjoy special privileges or franchises in the prosecution of their business, which are not enjoyed by all other persons or corporations. Since these privileges are conferred by the state upon the person or persons enjoying them, it seems fair that they should submit to reasonable regulations in the use of them. As only those persons who have been specially favored by the state may prosecute the business of a common carrier it seems nothing more than right and proper that they should be required to carry all persons under reasonable regulations. The same reasons for the state's right to regulate the business of common carriers do not exist, however, in the case of innkeepers, since they enjoy no such rights or privileges as the carrier does. The real ground for the state's interference seems to be that the business of innkeeping is one "affected with a public interest." "Property," it has been said, "does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore,

[11] Cooley, Torts, 278.

one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."[12] Upon this principle the courts have held that the state may, within reasonable bounds, regulate the business of innkeepers, and thus affect their relations with the public.[13]

3. *Powers of Parliament, Congress and State Legislatures to Control the Freedom of Contract.*—In England parliament probably has unlimited power to impose restrictions on the freedom of individuals to enter into contracts; with us there is a limit to the powers of congress and of the state legislatures in this respect. The United States, or a state, in the exercise of the police power, may regulate or prohibit the making of contracts when, in the judgment of congress or the legislatures, the public good requires the restriction, and ordinarily, the courts will not review their judgment as to the propriety of the law. There is, however, a limitation to the police power of the state. The federal constitution protects the vested rights of the people, and prohibits congress and the state legislatures from passing any law which shall deprive a citizen of his liberty or property without due process of law. The courts are bound to enforce the constitution, even as against the legislatures, as it is the supreme law of the land; and if the legislatures, assuming to act under the police power, should pass a statute depriving a person of the right to make contracts, when the public good clearly does not require such interference, the statute would be unconstitutional and void, and the courts would be bound to hold it.

4. *The Privilege of Contracting is Both a Liberty and a Property Right.*—The privilege of making and entering into contracts is more than a mere license or liberty. It is a property right.[14] It is an essential incident to the acquisition and protection of property, and is such right as the legislature may not arbitrarily and without sufficient cause either abridge or take away.[15] Property does not consist merely of the title and possession. In its broader sense, property is not the physical thing which may be the subject of ownership, but is the right of dominion, possession and power of disposition which may be acquired over it; and the right of property, preserved by the constitution, is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt.[16] Property includes the right to make any legal use of it, as well as the right to pledge or mortgage it, or to sell and transfer it. The right to contract a debt or other personal obligation is included in the right to liberty; and the right to contract a debt, or to enter into a bond or other writing obligatory, is also a right of property.[17] Signing bonds for other parties may be the result of friendship, or because of business interest, but the right to pledge one's estate is as much a right of property as either the title or possession. The right to sign a bond, or to enter into any other contract, cannot be made to depend upon the business in which one is engaged. "The privilege of contracting," it has been said, "is both a liberty and a property right, and if A is denied the right to contract and acquire property in the manner which he has hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract."[18] The legislature, therefore, cannot prevent persons who are *sui juris* from making their own contracts. The laborer may sell his labor for what he thinks best, whether for money or goods, just as his employer may sell his iron or coal, and a law which proposes to prevent him from so doing would be an infringement of his constitutional privileges.[19] As an incident to the right to acquire property, the liberty to enter into contracts by which labor may be employed, in such way as the laborer may deem most beneficial to himself, and of others to employ such labor, is included, as the authorities agree, in the constitutional guaranty. Laws, to stand, when brought to the test of the constitution, must preserve the right of each citizen to pursue his own advancement and happiness in his own way, subject only to the restraints necessary to secure the same rights to others.[20]

5. *The Right to Acquire Property Includes the Right to Contract.*—The right to acquire, sell, possess and protect property, and to pursue happiness, necessarily includes the right to make reasonable contracts which shall be under the protection of the law.[21] Of all the "rights of per-

[12] Munn v. Illinois, 94 U. S. 113, 126.

[13] Munn v. Illinois, *supra*, 129, citing, Mobile v. Yuille, 3 Ala. 140. See also Budd v. New York, 143 U. S. 545, 153 U. S. 403.

[14] Matthews v. People, 202 Ill. 389, 67 N. E. Rep. 28.

[15] Cleveland v. Clement, etc., Co., 59 L. R. A. 775, 781; State v. Goodwill, 33 W. Va. 179; Palmer v. Tingle, 55 Ohio St. 423, 45 N. E. Rep. 313; Ritchie v. People, 155 Ill. 98, 29 L. R. A. 79, 40 N. E Rep. 454; Low v. Rees Printing Co., 41 Neb. 127, 24 L. R. A. 702, 59 N. E. Rep. 362; Frorrer v. People, 141 Ill. 171, 16 L. R. A. 492, 31 N. E. Rep. 395; State v. Loomis, 115 Mo. 307, 21 L. R. A. 789, 22 S. W. Rep. 350; Commonwealth v. Perry, 155 Mass. 117, 14 L. R. A. 325, 28 N. E. Rep. 1126; *In re* Jacobs, 98 N. Y. 98, 106, 50 Am. St. Rep. 636; Allgeyer v. Louisiana, 165 U. S. 778; Leep v. St. Louis, etc., R. R. Co., 58 Ark. 407, 25 S. W. Rep. 75.

[16] Braceville Coal Co. v. People, 147 Ill. 66.

[17] Kuhn v. Common Council, 70 Mich. 534.

[18] *Per* Judge Scholfield, Frorrer v. People, 141 Ill. 171, 181.

[19] Godcharles v. Wigeman, 113 Pa. St. 431; State v. Goodwill, 33 W. Va. 179.

[20] Braceville Coal Co. v. People, 147 Ill. 66; Frorrer v. People, 141 Ill. 171.

[21] Allgeyer v. Lousiana, 165 U. S. 578; Republic Iron, etc., Co. v. State, 160 Ind. 379; Leep v. St. Louis, etc., R. R. Co., 58 Ark. 407, 25 S. W. Rep. 75, 23 L. R. A.

sons," the right to contract, it has been said, is "the most essential to human happiness."[22] The rights of life, liberty and property constitute a trinity of rights, and each as opposed to unlawful deprivation, is of equal constitutional importance with each of these rights, under the operation of a familiar principle, every auxiliary right or attribute necessary to make the principal right effectual and valuable in its most extensive sense, pass as incidents of the original grant. "The rights thus guaranteed are something more than the mere privileges of locomotion; the guarantee is the negation of arbitrary power in every form which results in a deprivation of a right." Each of these rights, life, liberty and property, carries with it as its natural and necessary coincident, all that effectuates and renders complete and full, unrestrained enjoyment of that right. With the right of property, therefore, is necessarily included the right of acquiring property by labor or contract, and also of terminating that contract at pleasure, being civilly liable for any unwarranted termination.[23] "Liberty," it has been said, "includes the right to make and enforce contracts because the right to make and enforce contracts is included in the right to acquire property."[24] The question is settled upon good authority that the right to buy, use and sell property and contract in respect thereto is protected by the constitution.[25] And when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property within the meaning of the constitution.[26] "The right to acquire, enjoy and dispose of property is declared in the constitutions of several states to be one of the inalienable rights of man. But this declaration is not held to preclude the legislature of any state from passing laws respecting the acquisition, enjoyment and disposition of property. What contracts respecting its acquisition and disposition shall be valid and what void or voidable; when they shall be in writing and when they may be made orally; and by what instruments it may be conveyed or mortgaged are subjects of constant legislation. And as to the enjoyment of property, the rule is general that it must be accompanied with such limitations as will not impair the equal enjoyment by others of their property. *Sic utere tuo ut alienum non laedas* is a maxim of universal application."[27]

6. *The Right to Pursue a Trade or Calling Includes the Right to Contract.*—In the privilege of pursuing an ordinary trade or calling must be embraced the right to make all proper contracts in relation thereto. It may be conceded that this right to contract in relation to persons or property, or to do business within the jurisdiction of a state, may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the state. "It is undoubtedly true," it was said by the United States Supreme Court, "that it is the right of every citizen of the United States to pursue any lawful trade or business, under such restrictions as are imposed upon all persons of the same age, sex and condition. But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law."[28] Yet the power does not and cannot extend to prohibiting a citizen from pursuing a lawful trade or calling and making all contracts which may be proper, necessary and essential to his carrying on such business successfully.[29] "The main proposition," it was

264; Commonwealth v. Perry, 155 Mass. 117; State v. Goodwill, 33 W. Va. 179. In Cox v. Pittsburgh, etc., R. R. Co., 1 Ohio N. P. R. 213, it was said that back of the right to acquire property lies the right to contract, and if a person can be deprived of the right to contract, he is injured in his right to acquire property. The liberty of making contracts is essential to the acquisition, possession and protection of property. Hence, if a statute *contravenes* this liberty, it must fall as certainly as though it were subversive of the citizen's right to more tangible or corporate property.

[22] Leep v. St. Louis, etc., R. R. Co., *supra*.

[23] State v. Julow, 129 Mo. 162, 173.

[24] Matthews v. People, 202 Ill. 389. In the case of Republic Iron, etc., Co. v. State, 160 Ind. 379, the court said that the right to a sustenance, and to acquire property, and to make treaties in relation thereto, is liberty in the constitutional sense. Kuhn v. Common Council, 70 Mich. 354. See United States v. Northern Securities Co., 120 Fed. Rep. 721, where it was held that the constitutional guaranty of liberty to the individual to enter into private contracts is limited to some extent by the commerce clause of the constitution of the United States, and congress may, in the exercise of the power conferred by such clause, prohibit private contracts which operate to directly and substantially restrain interstate commerce.

[25] Ritchie v. People, 155 Ill. 98, 104; State v. Goodwill, 33 W. Va. 179, 184.

[26] *In re* Jacobs, 98 N. Y. 98; Ritchie v. People, *supra*; Matthews v. People, 202 Ill. 389.

[27] Crowley v. Christensen, 137 U. S. 86, 90.

[28] Crowley v. Christensen, *supra*, 89. "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States." *Per* Justice Bradley in Butchers' Union Co. v. Cresent City Co., 111 U. S. 764.

[29] Allgeyer v. Louisiana, 165 U. S. 578, citing Butchers' Union Co. v. Crescent City Co., 111 U. S. 746; Powell v. Penn., 127 U. S. 678. In this case, an act prohibiting a person or corporation from doing any act within the state of Louisiana, to effect for himself or another, insurance on property then in the state, in any non-resident insurance company not complying with the laws of the state, was held to be in violation of the federal constitution, when applied to a contract of insurance made in another state, with an insurance company of that state, where the premiums and losses are to be paid. The act complained of was the writing within the state of Louisiana a letter of notifica-

said in the case of Powell v. Pennsylvania,[30] "advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment. The court assents to this general proposition as embodying a sound principle of constitutional law." In a later case it was said by the same court, that "in the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property must be embraced the right to make all proper contracts in relation thereto."[31]

7. *Labor and Vocation are Property.*—Property is every thing which has an exchangeable value.[32] That labor and vocation are property is now well settled in law.[33] "It [property] is exchangeable for food and raiment and comforts, and may be bought and sold, and contracts made in relation thereto, the same as concerning any other property."[34] The right to make labor available, it is held, is next in importance to the right to life and liberty.[35] And to deprive the laborer and the employer of the right to contract with each other is to violate private rights of the citizen which are secured by the constitution.[36] Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage, and, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty of the right of property.[37] In the case of State v. Goodwill,[38] a West Virginia case, it was said: "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing these in what manner he may think proper, without injury to his neighbor, is a plain violation of this most sacred property. It is equally an encroachment both upon the just liberty and rights of the workman and his employer, or those who might be disposed to employ him, for the legislature to interfere with the freedom of contract between them, as such interference hinders the one from working at what he thinks proper, and at the same time prevents the other from employing whom he chooses. A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this, is the right to labor or employ labor, make contracts in respect thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts, to sue, and give evidence, and to inherit, purchase, lease, sell, and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States, and other courts."

8. *Same Subject—The Right to Labor and Employ Labor.*—"The right to labor," it has been said, "is of all others, after the right to live, the fundamental, inalienable right of man, wherever he may be permitted to be, of which he cannot be deprived, either under the guise of law or otherwise, except by usurpation and force. Man ate and died. When God drove him 'forth from the Garden of Eden to till the ground, from whence he was taken,' and said to him, 'in the sweat of thy face shalt thou eat bread, till thou return unto the ground,' He invested him with an inalienable right to labor in order that he might again eat and live."[39] Every person living under the protection of the general government has the right to follow such occupation or industrial pursuit as to him seems fit, provided it is not injurious to the health, morals, safety or welfare of the public. Persons may labor or employ labor, and make contracts in respect thereto, upon such terms as may be agreed upon by them, independently of legislative control, so long as they confine their undertakings to lawful employments

tion to a New York insurance company notifying it of the property to be covered by the policy already delivered. The statute was held to deprive the defendant of liberty without due process of law.

[30] *Per* Justice Harlan, 127 U. S. 678, 684.

[31] Peckham, J., in Allgeyer v. Louisiana, 165 U. S. 578, 591.

[32] *In re* Tiburico Parrott, 1 Fed. Rep. 481.

[33] Matthews v. People, 202 Ill. 389; State v. Goodwill, 33 W. Va. 179; Burns v. Stewart, 3 Dessaus, 466, 479; O'Hara v. Stock, 90 Pa. St. 477, 491; Frorrer v. People, 141 Ill. 171; Braceville Coal Co. v. People, 147 Ill. 66; Erdman v. Mitchell (Pa.), 56 Atl. Rep. 327; State v. Stewart, 59 Vt. 273, 289; Cox v. Pittsburgh, etc., Co., 1 Ohio N. P. R. 213; Commonwealth v. Isenberg, 8 Kulp, 116; Commonwealth v. Brown, 6 Pa. Dist. R. 773; State v. Scougal, 3 S. Dak. 55, 74; Slaughter House Cases, 16 Wall. 36, 127; *In re* Marshall, 102 Fed. Rep. 323, 324.

[34] Republic Iron, etc., Co. v. State, 160 Ind. 370, 385.

[35] *In re* Tiburico Parrott, 1 Fed. Rep. 481.

[36] Matthews v. People, 202 Ill. 389.

[37] Braceville Coal Co. v. People, 147 Ill. 66.

[38] Snyder, J., 33 W. Va. 179, 183, citing Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1063; Slaughter House Cases, 16 Wall. 36; Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 4 Sup. Ct. Rep. 652, 6 Meyer Fed. Dec., sec. 1000; *In re* Jacobs, 98 N. Y. 98; People v. Marx, 99 N. Y. 377, 2 N. E. Rep. 29; *Ex parte* Westerfield, 55 Cal. 550; Ragio v. State, 86 Tenn. 272, 6 S. W. Rep. 401; State v. Devine, 98 N. Car. 778, 4 S. E. Rep. 477. A large part of the above oft-quoted quotation was originally pronounced by Adam Smith, in his "Wealth of Nations," Bk. 1, ch. 10.

[39] *In re* Tiburico Parrott, 1 Fed. Rep. 481, 506.

which are not of a *quasi*-public character.[40] Every man has a right, under the law, as between himself and others, to full freedom in disposing of his own labor or capital according to his own will, and anyone who invades that right without lawful cause commits a legal wrong.[41] And, to quote from an English case, "a man's right to determine when or where or with whom he will work, is in law a right of precisely the same nature and entitled to just the same protection, as a man's right to trade or work."[42] Every man has a right to employ his talents, industry and capital as he pleases, free from the dictation of others. The labor or skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property.[43] It was said in a recent case decided by the Supreme Court of Pennsylvania that "the right to the free use of his hands is the workman's property as much as the rich man's right to the undisturbed income from his factory, houses and lands, by his work he earns present subsistence for himself and family; his savings may result in accumulations which will make him as rich in houses and lands as his employer. The right of acquiring property is an inherent indefeasible right of the workman; to exercise it he must have the unrestricted privilege of working for such employer as he chooses at such wages as he chooses to accept. This is one of the rights guaranteed him by our 'Declaration of Rights,' it is a right of which the legislature cannot deprive him, one which the law of no trades union can take from him, and one which it is the bounden duty of the court to protect. The one most concerned in jealously maintaining this freedom is the workman himself."[44] Every man has the right to enter into any contract for the sale of his labor that, in his opinion, will be most advantageous and remunerative to himself. This right, of course, is subject to the condition that he must not, in the exercise thereof, infringe upon the rights of others.[45] A law, therefore, which interferes with the right to make reasonable and proper contracts in the course of a legitimate business, or attempts to nullify or impair the obligation of contracts made by persons in respect to labor, violates fundamental principles of right which are recognized by the constitution.[46]

9. *The Right to Buy and Sell.*—All persons, or at least the majority of them, know, or are in a position to know, much better than any public authority can, the price they should give for the various commodities of necessity or luxury which they need. The interests of the buyer on the one hand, and of the seller on the other, will be much more likely to adjust the proper price, than any intervening authority can possibly do. On the contrary, the latter would, in the long run, produce disturbance and confusion, and, it might be, in some instances, distress. Such, at least, has been the result of similar interference in the markets of Paris during the first French revolution. "I hold, therefore," said Judge Clarke, in a New York case, when speaking of state interference with matters of this kind, "that the exercise of such power by the government was never contemplated by the framers of our political constitutions, or by the people who ratified them; and that the powers of the legislature cannot be extended so far as to dictate to individuals what price they shall give, or what price they shall receive, for any thing they may want to buy or to sell. If it possessed this power, for instance, of dictating what price citizens should give for any article of dress, it could pre-

[40] Ritchie v. People, 155 Ill. 104.

[41] Doremus v. Hennessy, 176 Ill. 608; Auther v. Oakes, 63 Fed. Rep. 310.

[42] Allen v. Flood, A. C. 1 (1898.)

[43] State v. Stewart, 59 Vt. 273.

[44] Dean, J., in Erdman v. Mitchell, 207 Pa. St. 79, 91, 56 Atl. Rep. 227. "The first article," it was further said in this case, "of the constitution says: 'That the general great and essential principles of liberty and free government may be recognized and unalterably established; we declare that all men are born equally free and independent and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation and of pursuing their own happiness.' Then follows the conclusion of this section: 'Everything in this article is excepted out of the general powers of the government and shall forever remain inviolate.' This clause, unlike many others in the constitution, needs no affirmative legislation, civil or criminal, for its enforcement in the civil courts. Wherever a court of common pleas can be reached by the citizen, these great and essential principles of free government must be recognized and vindicated by that court, and the indefeasible right of liberty and the right to acquire property must be protected under the common-law judicial power of the court. Nor does it need statutory authority to frame its decrees or statutory process to enforce them against the violators of constitutional rights. * * * If the legislature to-day abolished indictment for wilful and malicious trespass, or abolished the writ of estrepement, tomorrow courts of equity would still be bound under the declaration of rights to protect the citizen in the peaceable possession and enjoyment of his land, even if to do so they were compelled to imprison the lawless trespasser who refused to obey their writs. So the same courts are still bound to protect the humblest mechanic or laborer in his right to acquire property."

[45] Commonwealth v. Brown, 6 Pa. Dist. Rep. 773. The right to labor and employ labor and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty that no person shall be deprived of life, liberty or property without due process of law. State v. Goodwill, 33 W. Va. 179, 6 L. R. A. 621; Godcharles v. Wigeman, 113 Pa. St. 431; Braceville Coal Co. v. People, 147 Ill. 66, 22 L. R. A. 340.

[46] Commonwealth v. Perry, 155 Mass. 117, 28 N. E. Rep. 1126, 14 L. R. A. 325, 31 Am. St. Rep. 533; Leep v. St. Louis, etc., R. R. Co., 58 Ark. 407, 25 S. W. Rep. 75, 23 L. R. A. 264, 41 Am. St. Rep. 109.

scribe what kind of dress they should wear; and thus we may, during any legislative session, hear that we had returned to the days of sumptuary laws. * * * Can we believe that such things in any of the commonwealths of America are cognizable by law, or that the people delegated such power to their legislatures? No; the legislative power in America is not omnipotent in this sense; regulations relative to private manners and habits, and to prices and expenses, are not within the domain of civil law. The possession of such power belongs alone to absolute governments, or to parliaments, which possess omnipotence. A power so infinite is inconsistent with the character and design of constitutional republican government. All the political power which the people, in their sovereign capacity, can, consistently with that character and design, exercise, has been delegated to the legislature; but nothing more. It can no more prescribe to us what price we shall pay for a coat, or for a substitute in the army, than it can prescribe what kind of shoes we shall wear, or how many courses we shall have for dinner. No government professing such power could be called free, and yet in framing the present constitution, the people declared that they establish it, in gratitude 'to Almighty God for their freedom.'"[47] Constitutional government, under whatever form it may exist, is not based on the idea that all the conduct and acts and interests of a citizen are the proper subjects of legislation. On the contrary, the tendency of such a system is to confine the action of government within as limited a sphere as is consistent with the maintenance of the peace, good order and progress of society. It recognizes the great truth, that the most important and sacred purposes and interests of society are not within the domain of civil law, but are regulated by the power of self-adjustment, which God has implanted in it, through the balancing and antagonism of the varied needs and aspirations of the individuals of whom it is composed. The moral and religious interests of society, for instance, are out of the sphere of law—out of the sphere of political government; they are wisely left to individual and social efforts, prompted by benevolence and conscience. Not only are such efforts infinitely more benignant, but they are much more effectual than they possibly could be made through the cumbrous machinery of state, or any other political government.[48]

10. *Depriving a Person of the Right to Contract Deprives Him of Property.*—To deprive the owner of property of one of its essential attributes, like the right to make a reasonable contract, deprives him, it is held, of his property, within the meaning of the constitution.[49] It is settled upon good authority that the privilege of contracting is not only a liberty, but is a property right as well,[50] and is protected by that provision of the constitution which guaranties that no person shall be deprived of his liberty or property without due process of law. Consequently, if a person is denied the right to contract and acquire property in the manner which he has before enjoyed under the law, and which, it may be, other persons are still allowed to do, it is reasonably clear that he is deprived of property to the extent that he is denied the right to contract.[51] The right to contract is justly regarded as a very important right, vitally affecting the interests of either party to the agreement. To the extent to which it is abridged, a property right is destroyed or taken away.[52] The protection of property is one of the objects for which free governments are instituted among men. And, as we have seen in another connection,[53] the right to acquire, possess and protect property includes the right to make reasonable contracts. Therefore, when an owner is deprived of an attribute of property, like the right to make contracts, he is deprived of his property within the meaning of the constitution.[54] The right to contract is the only way by which a person can rightfully acquire property by his labor.[55] It is included in the fundamental rights of liberty and property, and cannot be taken away without due process of law.[56]

[47] Powers v. Shepard, 1 Abb. Prac. (N. S.) 129, 133, 45 Barb. 524, 526, 527. In this case a statute prescribing what sum an individual should pay for a substitute to represent him in the national army, was held unconstitutional and void. "Formerly," it was further said in this case, "in England penal laws were enacted by the omnipotent parliament, to restrain excess in apparel, chiefly in the reigns of Edward III., Edward IV., and Henry VIII., against piked shoes, short doublets, and long coats, all of which, Blackstone tells us, were repealed by statute 1 Jac. 1, ch. 25. But, he remarks, as to excess in diet, there still remains one ancient statute unrepealed (10 Edw. III., ch. 3), which ordains that no man shall be served at dinner or supper with more than two courses, except on some great holidays, there specified, in which he may be served with three."

[48] Powers v. Shepard, 45 Barb. 524, 1 Abb. Prac. (N. S.) 129. See Beebe v. State, 6 Ind. 501, 512; Arrowsmith v. Burlingim, 4 McLean, 497; *In re* Jacobs, 98 N. Y. 98; People v. Bubb, 117 N. Y. 1, 43, 67, 68, 69.

[49] People v. Otis, 90 N. Y. 48; Ritchie v. People, 155 Ill. 98. "The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor, is protected by the constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades and regulate all contracts." State v. Goodwill, 33 W. Va. 179, 184; State v. Julow, 129 Mo. 163.

[50] Frorrer v. People, 141 Ill. 171; Ramsey v. People, 142 Ill. 386.

[51] Braceville Coal Co. v. People, 147 Ill. 66; Millett v. People, 117 Ill. 295; State v. Goodwill, 33 W. Va. 179; *In re* Jacobs, 98 N. Y. 98.

[52] Ramsey v. People, 142 Ill. 386.

[53] See No. 5.

[54] *In re* Jacobs, 98 N. Y. 98; Ritchie v. People, 155 Ill. 98.

[55] Leep v. St. Louis, etc., R. R. Co., 58 Ark. 407.

[56] Ritchie v. People, *supra*. "The constitutiona

11. *Contractual Rights of Corporations.*—What is true of natural persons is not always true of corporations. Natural persons do not derive their right to contract from the legislature. Corporations, however, do. They possess only those powers or properties which the charter of their creation confers on them, either expressly or as incidental to their existence; and these may be modified or diminished by amendment or extinguished by the repeal of their charters when the right to do so has been reserved by the state conferring the charter.[57] A corporation has no inherent or natural rights like a citizen. It has no rights except those which are expressly conferred upon it, or are necessarily inferable from powers actually granted, or such as may be indispensable to the exercise of such as are granted.[58] "A corporation," it was said by Justice McKenna, in the Supreme Federal Court, "is the creature of the law, and none of its powers are original. They are precisely what the incorporating act has made them, and can only be exerted in the manner which that act authorizes. In other words, the state prescribes the purposes of a corporation and the means of executing those purposes. Purposes and means are within the state's control. This is true as to domestic corporations. It has even a broader application to foreign corporations."[59] While corporations are included within the operation of the constitutional guaranties of the sanctity of the rights of property,[60] it has been held that this is not the case in regard to the constitutional guaranty of the liberty of contract. This guaranty is held to be reserved to natural persons and not to corporations. While certain police regulations of the liberty of contract may be unconstitutional as applied to natural persons, they may be valid when they are enforced, against corporations. Where the power to amend or revoke a charter is reserved to the state, there can be no force in the plea that a police regulation violates constitutional rights, unless some vested property right in infringed thereby.[61]

12. *Police Regulations — Comfort, Safety, Health, Morals, Welfare.* — Under the police power the legislature may prohibit all things which are hurtful to the comfort, safety, health, morals and welfare of the public, even though the prohibition invade the right of liberty or property of an individual.[62] A law, however, to have that effect and be valid, must be an appropriate measure for the promotion of the comfort, welfare, health, safety or morals of the general public. It must be what it purports to be, a police regulation in truth and in fact. Courts are authorized to interfere and declare a statute unconstitutional, or not the "law of the land," if it conflicts with the constitutional rights of the citizen and does not relate to or is not an appropriate measure for the purposes enumerated.[63] When the legislature, therefore, undertakes to restrain or regulate the right of citizens to freely

guaranty that no person shall be deprived of his property without due process of law may be violated thout the physical taking of property for public use. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived, and hence any law which destroys it or its value, or takes away any of its essential attributes, deprives the owner of his property. The constitutional guaranty would be of little worth if the constitution could, without compensation, destroy property or its value, deprive the owner of its use, deny him the right to live in his own house, or to work at any lawful trade therein." *In re* Jacobs, 98 N. Y. 98.

[57] Shaffer v. Mining Co., 55 Md. 74; State v. Brown, etc., Co., 18 R. I. 16, 25 Atl. Rep. 246; Sinking Fund Cases, 94 U. S. 700; Miller v. State, 15 Wall. 498; Holyoke Co. v. Lyman, 15 Wall. 519; Tomlinson v. Jessup, 15 Wall. 459; Railroad Company v. Maine, 96 U. S. 499; Shields v. Ohio, 95 U. S. 324; Roxbury v. R. R. Co., 6 Cush. 424; Fitchburg Company v. Grand Junction Co., 4 Allen, 198; Commonwealth v. Easton Co., 103 Mass. 254; Railroad Company v. Bonnell, 24 N. Y. 345; Waterworks v. Schottler, 110 U. S. 347. See also Detroit v. Road Co., 43 Mich. 140.

[58] Waters-Pierce Co. v. Texas, 177 U. S. 28; Leep v. St. Louis, etc., R. R. Co., 58 Ark. 407, 23 L. R. A. 264; Shaffer v. Mining Co., 55 Md. 74.

[59] Waters-Pierce, etc., Co. v. Texas, *supra*, 43.

[60] Wheeling Bridge, etc., Co. v. Gilmore, 8 Ohio C. C. R. 658; Citizens' Horse Ry. Co. v. City, 47 Ill. App. 388.

[61] Leep v. St. Louis, etc., R. R. Co., *supra*, and cases cited. In this case, however, it was said: "It is obvious that the legislature cannot, under the power to amend, take from corporations the right to contract; for it is essential to their existence. It can regulate it when the interest of the public demand it, but not to such an extent as to render it ineffectual, or substantially impair the object of incorporation. The constitution of this state (Arkansas) in reserving the power to amend or repeal, expressly provides that it may be exercised whenever, in the opinion of the legislature, the charter 'may be injurious to the citizen of this state; in such manner, however, that no injustice shall be done to the corporation.' Whenever the charters of railroad companies become obstacles in the way of the legislature so regulating their roads as to make them subserve the public interest to the fullest extent practicable, their charters are, in that respect, injurious to the citizens of the state, and can be amended as to defects in such manner as will be just to the corporations For they are organized for a public purpose, and their roads are declared by the constitution to be public highways, and they are made common carriers." See also Chicago Life Insurance Co. v. Needles, 113 U. S. 574; Minnesota R. R. Co. v. Beckwith, 129 U. S. 26; R. R. Co. v. Wilson (Texas), 19 S. W. Rep. 910.

[62] Powell v. Pennsylvania, 127 U. S. 678; Boston Beer Co. v. Massachusetts, 97 U. S. 25; Lawton v. Steel, 152 U. S. 133; Stone v. Mississippi, 101 U. S. 814; Hannibal, etc., R. R. Co. v. Husen, 95 U. S. 465; Patterson v. Kentucky, 97 U. S. 501; Barbour v. Connolly, 113 U. S. 27; State v. Kansas City, etc., R. R. Co., 32 Fed. Rep. 722; New Orleans Water Works Co. v. St. Tammany, etc., Co., 14 Fed. Rep. 194; *In re* Considine, 83 Fed. Rep. 157; Dent v. West Virginia, 129 U. S. 122.

[63] Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315; Lawton v. Steel, 152 U. S. 133; *In re* Wilkshire, 103 Fed. Rep. 620.

enter into contractual relations with each other. it must not only appear to the general assembly that the restraint of the right and liberty of contract is for the common public welfare, and the equal protection and benefit of the people, but to the courts as well, and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common good.[64] While the constitutional liberty of contract is not conceded to be absolutely free from all legislative restraint, still one's liberty, as well as property, is infringed, if his liberty to make reasonable contracts is taken away or restricted by unreasonable regulations. No one will, perhaps, question the statement that an unrestrained right to contract might become a serious menace to the safety and welfare of the public; or might injuriously affect the rights of others. At no time in the life of the law has it been permissible for a person to contract for the commission of crime, or for the violation of law, or for the trespass upon the rights of others, or for the perpetration of fraud. With the broadening of the police power in the conservation and protection of the public's interests, regulations, from time to time, have been prescribed by the legislature, to some extent limiting or restricting the liberty of contract; and these regulations are now being rapidly multiplied. Courts are therefore called upon to pass upon the reasonableness or unreasonableness of such regulations and thus declare their constitutionality or unconstitutionality. With the wisdom, policy or necessity for such enactments courts have nothing whatever to do.[65] But what are the subjects of police power, and what are reasonable or unreasonable regulations, are judicial questions, and courts may declare enactments which, under the guise of police regulations, go beyond the great principle of securing the safety or welfare of the public, to be invalid.[66] Acts, which in and of themselves alone are harmless enough, may be condemned because of the facility they otherwise offer for a cover or disguise for the doing of that which is harmful.[67] The government, however, under the guise of regulation, cannot prohibit or destroy. It cannot deprive a citizen of his right to pursue a calling, occupation or business not necessarily injurious to the community, when he is willing to comply with reasonable regulations imposed upon him or the business. It can never encroach upon the liberty of the citizen or invade the rights of property which are protected by the constitution.[68]

13. *Legislative Interference with Fundamental Rights—Privileges and Immunities of Citizens.*—Without doubt the legislature has the right to prescribe whatever reasonable regulations it deems necessary for the preservation of the public health, good order, morals and intelligence not inconsistent with constitutional restrictions. It cannot, however, as before observed, interfere with the fundamental rights, liberties, privileges and immunities of the citizen, under the guise of police regulations. This question, of course, has its limits in both directions; and while courts should carefully abstain from invading the almost limitless field of legislation, where the will of the people is supposed to be freely expressed, it is, nevertheless, their duty to prevent the infringement of any undoubted individual right secured by the constitution. Laws which undertake to abolish rights, the exercise of which does not infringe the rights of others, or to limit their exercise beyond what is reasonably necessary to secure the public welfare, health and safety, cannot be regarded as a proper exercise of the police power of the state. This would be governmental usurpation, such as violates the principles of abstract justice as developed under our republican institutions. "The disposition of legislatures to interfere in the ordinary concerns of the individual, as evidenced by the laws enacted by parliaments and legislatures from the earliest times, and the futility of such interference to accomplish the purposes intended, have been the subject of remark by some of the ablest of English speaking observers. Buckle, in his History of Civilization in England, in speaking of the course of English legislation, says: 'Every great reform which has been effected has consisted, not in doing something new, but in undoing something old. The most valuable additions made to legislation have been enactments destructive of preceding legislation, and the best laws which have been passed have been those by which some former laws have been repealed.' And again: 'We find laws to regulate wages; laws to regulate prices; laws to regulate profits; laws to regulate the interest on money; custom house arrangements of the most vexatious kind, aided by a complicated scheme, which was well called the sliding scale—a scheme of such perverse ingenuity that the duties constantly varied on the same article, and no man could calculate beforehand what he would have to pay. A system was organized, and strictly enforced, of interference with markets, interference with manufactures, interference with machinery, interference even with shops. In other words, the industrious classes were robbed in order that industry might

[64] Palmer v. Tingle, 55 Ohio St. 423, 45 N. E. Rep. 313; People v. Gillson, 109 N. Y. 389, 4 Am. St. Rep. 465.

[65] Booth v. People, 186 Ill. 43, 49; State v. Schlenkee, 112 Iowa, 642, 646.

[66] *Ex parte* Whitwell, 98 Cal. 73; *In re* Morgan, 26 Colo. 415; People v. Gillson, 109 N. Y. 389; New York Fire Department v. Gilmore, 149 N. Y. 453; Color v. Fisk, 153 N. Y. 188; Commonwealth v. Vrooman, 164 Pa. St. 306; State v. Speyer, 67 Vt. 502; State v. Goodwill, 33 W. Va. 179; Taylor v. Pine Bluff, 34 Ark. 603; Platte, etc., Canal, etc., Co. v. Dowell, 17 Colo. 376; Ruhstrat v. People, 185 Ill. 133; People v. Warden, 144 N. Y. 529; McCullough v. Brown, 41 S. Car. 220; Booth v. People, 186 Ill. 43.

[67] Magrer v. People, 97 Ill. 320, 331.

[68] State v. Scougal, 3 S. Dak. 55, 68; *In re* Jacobs, 98 N. Y. 98.

thrive.'[69] To uphold legislation of this character is to provide the most frequent opportunity for arraying class against class; and, in addition to the ordinary competition that exists throughout all industries, a new competition will be introduced, that of competition for the possession of the government, so that legislative aid may be given to the class in possession thereof in its contests with rival classes or interests in all sections and corners of the industrial world. * * * Contests of such a nature are productive only of harm. The only safety for all is to uphold, in their full vigor, the healthful restrictions of our constitution, which provide for the liberty of the citizen, and erect a safeguard against legislative encroachments thereon, whether exerted today in favor of what is termed the laboring interests, or tomorrow in favor of the capitalists. Both classes are under its protection, and neither can interfere with the liberty of the citizen, without a violation of the fundamental law. In my opinion the court should not strain after holding such species of legislation constitutional. It is so plain an effort to interfere with what seems to me the most sacred rights of property and the individual liberty of contract that no special intendment in its favor should be indulged in."[70]

14. *Special Laws — Partial Legislation.*—Some statutes may be void though general in their scope, while others may be valid though establishing rules for single cases only. An enactment, therefore, may be the law of the land without being a general law. Public laws may be either general or local in their application, unless some express constitutional provision forbids. They may embrace many subjects or one, or they may extend to all persons or be confined to particular classes, as minors, married women, and the like. The legislature must determine whether particular rules shall extend to the people of all the state or to a part of the state or a class of citizens thereof. The needs or prevailing public sentiment of a section of the state may require or make acceptable police regulations which are not suited to other parts of the state. The legislature therefore may prescribe such different laws of police for different sections of the state as in its judgment the different needs and requirements of the section or sections under consideration make necessary. Discriminations like these are continually made, and their local or special character is not enough to render them invalid. It may be desirable for the legislature to prescribe special rules for certain occupations, and make distinctions in the rights, obligations and capacities of individuals. Common carriers and bankers, for example, may require special regulation for the public benefit. If the laws are not otherwise objectionable, all that can be required of them is that they be general in their application to the class or locality to which they apply. Statutes, however, which select particular individuals from a class or locality, and subject them to special rules, or impose upon them peculiar obligations or burdens from which others in the same class or locality are exempt, are unconstitutional and void.[71] "It is undoubtedly true," said the court in an Illinois case, "that the people, in their representative capacity, may, by general laws, render that unlawful, in many cases, which had hitherto been lawful. But laws depriving particular persons or classes of persons of rights enjoyed by the community at large, to be valid. must be based upon some existing distinction or reason applicable to others not included within the provisions. And it is only when such distinctions exist that differentiate, in important particulars, persons or classes of persons from the body of the people, that laws having operation only upon such particular persons or classes of persons have been held to be valid enactments."[72] The imposition of unreasonable and unnecessary burdens upon any one citizen or class of citizens, is held to transcend the authority intrusted to the legislature by the constitution. This has been held to be the case even though the same burden is imposed upon all other citizens or classes of citizens. General laws, agreeably to this view, may be as tyrannical as partial laws.[73] Every law, it is said, which destroys or affects individual rights, or restricts the privileges of certain classes of persons, where there is no public necessity for such discrimination, is void. "The rights of every individual," said the Supreme Court of West Virginia, "must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, and the mass of the community, and those who make the laws, by another; whereas, a like general law, affecting the whole community equally could not

[69] Buckle's History of Civilization in England, vol. 1, pp. 199, 200, etc.

[70] People v. Budd, 117 N. Y. 1, 68, 69. Opinion by Peckham, J., since elevated to the Supreme Court of the United States. See also People v. Gillson, 109 U. S. 389.

[71] See Lin Sing v. Washburn, 20 Cal. 534.

[72] Braceville Coal Co. v. People, 147 Ill. 72. See Cooley's Const. Lim. (7th Ed.), 554-557.

[73] Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315. It was said in this case that "the right to contract would be valueless if it could not be exercised with reference to the particular subject-matter in hand. If its exercise is forbidden between two persons competent to contract and concerning a lawful subject of contract, it is none the less abridged because other persons may be permitted to contract, or because the same persons may be at liberty to contract about some other matter."

have been enacted."[74] A law, however, according to the prevailing view of courts, is not necessarily special which includes within its operation all persons of a class, to which its provisions can alone be applied. If that were the true construction of the constitutional provision against the enactment of special laws, most of the police regulations of trades and professions, as well as property, would be unconstitutional as class legislation.[75] In many instances police regulations of trades and professions are held to be unconstitutional not only because they are special laws, affecting only one class of citizens, and not applicable to all persons in general, but likewise because they constitute an unlawful interference with the citizen's liberty of contract. In cases where they are unconstitutional, it is probable that they are so for the principal reason that they, as general laws, are an unconstitutional interference with the liberty of contract of the individuals affected by their provisions.[76]

15. *Paternalism in Government — Sumptuary Laws.*—Laws which place arbitrary restrictions upon the right of the citizen to contract are the outgrowth of a sentiment favorable to paternalism in matters of legislation.[77] The effect of such laws, it is held, is to substitute the judgment of the legislature for the judgment of individuals in matters about which they are competent to agree with each other. In arbitrarily interfering with the liberty of contract between persons able to bind each other by valid agreements, the legislature assumes to dictate to what extent they shall exercise their faculties and capacities in acquiring and possessing property, thus infringing the right of private judgment in respect thereto.[78] The doctrine of paternalism has been justified by some writers and judges upon the asserted fact that labor is constantly engaged in an unequal contest with capital, and that the former must be reinforced by the legislative power of the state to prevent its overthrow in the conflict. But liberty is the cornerstone of our government, and laws which infringe the free exercise of the right of persons to freely enter into business relations with each other in ways which they may consider most advantageous to themselves, are encroachments upon their constitutional rights and obstructions to their pursuit of happiness.[79] "They are plain invasions," says Judge Cooley, "of individual liberty, and therefore are forbidden. Every person must be allowed to judge of his own table, and to dress as he pleases, subject to such police regulations as may be established for the preservation of public order and public morals. Women, for example, may be forbidden to go about in the ordinary garb of men, as a necessary regulation against immorality and indecency. So every person must be allowed to deal with his property as he pleases, subject to reasonable regulations for the protection of others. He cannot, for example, be compelled against his will to improve his real estate."[80] Justice Brewer, when speaking of this class of legislation, said in the Supreme Court of the United States: "The paternal theory of government is to me odious. The utmost possible liberty to the individual, and the fullest possible protection to him and his property, is both the limitation and duty of government. If it may regulate the price of one service, which is not a public service, or the compensation for the use of one kind of property which is not devoted to a public use, why may it not with equal reason regulate the price of all service, and the compensation to be paid for the use of all property? And if so, 'Looking Backward' is nearer than a dream."[81]

16. *The Privilege of Contracting is not Absolute.*—Notwithstanding the general liberty of contract possessed by the citizen under the constitution, it is conceded by all persons that the right is not absolute, and may be subjected to the restraints demanded by the safety and welfare of the public.[82] There are many kinds of contracts which, while not in themselves immoral or *mala in se*, may yet be prohibited by the legislatures of states, and in certain cases by congress.[83] The

[74] Snyder, J., in State v. Goodwill, 33 W. Va. 179, 182, citing Wally v. Kennedy, 2 Yerg. 554. See Johnson v. Mining Co. (Cal.), 59 Pac. Rep. 304.

[75] See Orient Insurance Co. v. Daggs, 172 U. S. 557, affirming 136 Mo. 382. See Millett v. People, 117 Ill. 394; State v. Haun, 61 Kan. 146; 18 Am. Law Reg. (N. S.) 676, 864, an article by Judge Cooley; 32 Am. Law Reg. & Rev. 1109, where the subject is discussed.

[76] See Vogel v. Pekoc, 157 Ill. 339, 30 L. R. A. 491.

[77] Lowe v. Rees Printing Co., 41 Neb. 127. In this case it was said: "The outgrowth of this sentiment has been legislation for the regulation of the media of payment; the manner in which products shall be measured or weighed when compensation depends upon measure or weight, the hours of labor, and other kindred subjects."

[78] Ritchie v. People, 155 Ill. 98, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315. See State v. Loomis, 115 Mo. 307, 22 S. W. Rep. 350, 21 L. R. A. 789; *In re* Jacobs, 98 N. Y. 98, 114. In State v. Goodwill, 33 W. Va. 179, 186, the court, in speaking of a law prohibiting the issuing of script, etc., in payment of wages, etc., said: "In view of what the courts have uniformly held in respect to this class of legislation, it is needless to prolong this discussion. It is a species of sumptuary legislation which has been universally condemned, as an attempt to degrade the intelligence, virtue, and manhood of the American laborer, and foist upon the people a paternal government of the most objectionable character, because it assumes that the employer is a knave, and the laborer an imbecile." Se also Republic Iron, etc., Co. v. State, 160 Ind. 379; Frorrer v. People, 141 Ill. 171, 180, 31 N. E. Rep. 397, 16 L. R. A. 495.

[79] State v. Haun, 61 Kan. 146.

[80] Cooley's Prin. Const. Law, 263.

[81] Budd v. New York, 143 U. S. 517, 551.

[82] St. Louis, Iron Mountain, etc., Railroad Co. v. Paul, 173 U. S. 404.

[83] United States v. Joint Traffic Association, 171 U. S. 505; State v. Loomis, 115 Mo. 307; *In re* Jacobs, 98 N. Y. 98; People v. Gillson, 109 N. Y. 389; Godcharles v. Wigeman, 113 Pa. St. 431; Commonwealth v. Perry, 155 Mass. 117; *Ex parte* Sing Lee, 96 Cal.

conflicting interests of individuals makes this necessary. Rights in conflict with each other cannot be unlimited. Duties to persons and society are imposed on every individual. Every man, when he enters into society, undertakes to perform these duties. He necessarily surrenders some rights or privileges on account of his relations to others. His right to contract becomes subject to these duties, among which is the duty to so conduct himself and use his property as to not unnecessarily injure another. He submits himself to such restraints and burdens as may conduce to the general comfort, health and prosperity of the state. To conserve and enforce these rights and duties the government can impose such restrictions upon his actions as may be appropriate for that purpose. "This power inheres in every sovereignty and is essential to the maintenance of public order, and the preservation of mutual rights from the disturbing conflicts which would arise in the absence of any controlling, regulating authority."[84] It is within the undoubted power of government to restrain some individuals from all contracts as well as all individuals from some contracts. Thus it may deny to all persons the right to contract for the purchase and sale of lottery tickets.[85] It may deny to the common carrier the power to make any contract releasing himself from liability for his negligence. Indeed, it may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by governments in no manner conflicts with the proposition that generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property.[86]

17. *Limitation of the Right to Contract Must Rest Upon Some Substantial Basis.*—As has been stated before, the right to contract may be subject to limitations growing out of the duties which the individual owes to society, to the public, or to the government. These limitations are sometimes imposed by the obligation to so use one's own as not to injure another.[87] They may be imposed to meet the demands of public policy or on account of the necessity of protecting the public against fraud or injury. They may also be necessary because of the want of capacity of the contracting parties. But the power of the legislature to limit the right to contract must, in every case, rest upon some reasonable basis. It cannot be arbitrarily exercised.[88] It has been held that such power must be based in every case on some condition, and not on the absolute right to control.[89] If the right to contract could be limited by arbitrary legislation which is based on no reason upon which it may be defended, the right would cease to exist and become a license revocable at the will of the legislature. Such power cannot exist, for, if it could, it would be subversive of the right to enjoy and defend liberty, acquire and possess property, and to pursue happiness, declared to be inalienable by the constitution.[90] "When the subject of the contract," it has been said, "is purely and exclusively private, unaffected by any public interest or duty to person, to society, or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract, or controlling the terms thereof."[91] The right to buy, use, and sell property, and contract in respect thereto, is protected by the constitution. There must be some public necessity to justify the legislature in restricting or prohibiting the right of contract between private persons in respect to lawful trades or businesses.[92] The general rule is, that parties, able and willing to contract, may freely make such contracts concerning their property or labor not contrary to good morals or public policy, as they may deem for their best interests. The instances where the legislature may interfere to abridge or deny this right are exceptional, and such interference must have some reason for its justification other than the mere judgment of the legislature that the contract is not for the best interests of one or the other of the parties to it.[93] Judge Cooley has said on the general subject that "the doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges or legal capacities in a manner before unknown to the law, could be sustained notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended,—like the want of capacity in infants and insane persons; and if the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts,

354; State v. Goodwill, 33 W. Va. 179; State v. Firecreek Coal, etc., Co., 33 W. Va. 188; Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407; Millett v. People, 117 Ill. 294; Frorrer v. People, 141 Ill. 171; *In re* Kubach, 88 Cal. 274; Coal Company v. People, 147 Ill. 66; Republic Iron, etc., Co. v. State, 160 Ind. 379.

[84] See Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407, 25 S. W. Rep. 75.

[85] Frisbie v. United States, 157 U. S. 160.

[86] Frisbie v. United States, 157 U. S. 160.

[87] Ritchie v. People, 154 Ill. 98.

[88] Ritchie v. People, *supra*.

[89] State v. Loomis, 115 Mo. 307; Ritchie v. People, *supra*.

[90] State v. Norton, 5 Ohio N. P. R. 183; Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407, 25 S. W. Rep. 75, 23 L. R. A. 264; Andrew v. Beame, 15 R. I. 461, 8 Atl. Rep. 540. See Hancock v. Yaden, 121 Ind. 366; State v. Peel Splint Coal Co., 36 W. Va. 802; 15 S. E. Rep. 1000. The latter cases seem to take a contrary view, but they are against the weight of authority. They do not hold, however, that the legislature has absolute right or power to limit the right to contract.

[91] Leep v. St. Louis, etc., Railroad Co., 58 Ark. 407, 421.

[92] State v. Goodwill, 33 W. Va. 179.

[93] Commonwealth v. Brown, 8 Pa. Sup. Ct. Rep. 339.

or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the acts would transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuit of happiness; and those who would claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and where the authority is negatived."[94] "We do not believe," it has been said, "that, in good conscience, the right to make any lawful contract can be limited or controlled by legislation determined by no rule or principle, that is, purely arbitrary legislation, and therefore absolutely defenseless; because if it could, the right of freedom of contract would cease to live, and would become a mere plaything, and a license revocable at the will, whim or caprice of the law making power; and thereupon, the government would become a despotism, both in theory and in fact. * * * Now, it is apparent, that when the subject of a contract is purely of a private nature, and not affected by any public interest or duty to society, to person or government, and the parties are capable of contracting, there is no condition existing, upon which the city council can interfere for the purpose of either forbidding the making of a contract, or controlling its terms and conditions."[95] The constitutional guaranty of liberty to the individual to enter into private contracts is, however, limited to some extent by the commerce clause of the constitution of the United States, and congress may, in the exercise of the power conferred by such clause, prohibit private contracts which operate to directly and substantially restrain interstate commerce.[96]

18. *Form of Contracts—Statute of Frauds.*—The legislature may declare the mode or form in which the contracts of parties shall be expressed or evidenced in order that they may be enforceable.[97] The statutes of fraud are sometimes referred to for the purpose of showing the power of the legislature to control the right to contract. The object of these statutes is to prevent fraud and perjuries. For this purpose some of them provide that certain contracts shall be in writing, in order to prevent controversies, litigation, and false swearing as to the terms of the contract. Others declare that certain deeds, conveyances and transactions shall be void because they defraud or tend to defraud innocent persons. They are based on the maxim: "*Sic utere tuo ut alienum non laedas.*" None of them limit the right to contract, but regulate the exercise of it.[98] They clearly come within the power of the legislature to protect the rights of persons, prevent wrongs, and enforce honesty and fair dealing in the transactions of individuals.[99]

19. *Business or Property Affected with a Public Use.*—The legislature can control to some extent the right to contract in reference to property clothed with a public interest, when used in a manner to make it of public consequence, and affect the community at large.[100] By devoting his property to a use in which the public has an interest, the owner, in effect, grants to the public an interest in that use, and submits himself to the control of the legislature for the common good, to the extent of the interest he has thus created. Persons and corporations engaged in certain occupations may be in the exercise of public franchises or special privileges not enjoyed by others, in which case the business implies a trust or public duty. The government, therefore, has a right to see that the trust is not abused and that the duty imposed by it is properly performed. Upon this principle the legislature can regulate the charges to be made for the storage of grain in public warehouses, and for the carriage of freight and passengers by common carriers.[101] From the same source comes the power to regulate telephone, telegraph, and other companies,[102] warehousemen, wharfingers, innkeepers, mills, bakers, hackmen and ferries,[103] and in so doing to fix a maximum of charge to be

[94] Cooley's Const. Lim. 560, 561 (7th Ed.). See also to same effect *In re* Morgan, 26 Colo. 415; Low v. Rees Printing Co., 41 Neb. 137; Ten Hour Law, 24 R. I. 603, 610.

[95] State v. Norton, 5 Ohio N. P. R. 183, 186, 187. In this case the constitutionality of a law fixing the hours of labor and the amount of wages to be paid to laborers, was under consideration. See Holden v. Hardy, 169 U. S. 393, 18 Sup. Ct Rep. 388, 42 Law Ed. 780, where it was said: "The fact that both parties to a contract are of full age and competent to enter into the same does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer." See also State v. Cantwell, 78 S. W. Rep. 575.

[96] United States v. Northern Securities Co., 120 Fed. Rep. 721.

[97] Commonwealth v. Brown, 8 Pa. Sup. Ct. Rep. 339.

[98] Mansfield Digest, Secs. 3371-3384.

[99] See Browne on Statute of Frauds, Secs. 114-138 (5th Ed.).

[100] Commonwealth v. Brown, 8 Pa. Sup. Ct. Rep. 339; Munn v. People, 94 U. S. 113; State v. Goodwill, 33 W. Va. 179.

[101] See note 104.

[102] See sections on Telephones, Telegraph Companies, Water and Gas Companys.

[103] See sections on Warehousemen, Wharfingers, Innkeepers, Mills, Bakers, Hackmen and Ferries.

made for services rendered, accommodations furnished and articles sold.[104]

20. *Usury.*—Other instances of statutory regulation of the right to contract may be found in the statutes of many states prohibiting the taking of usury. They rest upon a traditional policy antedating the constitution. "They proceed," says Justice Schofield, in an Illinois case, "upon the theory that the lender and borrower of money do not occupy toward each other the same relations of equality that parties do in contracting with each other in regard to the loan or sale of other kinds of property, and that the borrower's necessities deprive him of freedom in contracting and place him at the mercy of the lender."[105] Lord Chief Justice Best, in 1825, in delivering an unanimous opinion of twelve judges, said: "The supposed policy of the usury laws in modern times is to protect necessity against avarice, to fix such a rate of interest as will enable industry to employ with advantage borrowed capital, and thereby to promote labor and increase national wealth, and to enable the state to borrow on better terms than could be made if speculation could meet the ministers in the money market on equal terms."[106]

O. H. MYRICK.

Los Angeles, Cal.

[104] See generally Munn v. Illinois, 94 U. S. 113; Budd v. New York, 143 U. S. 517; Dow v. Beidleman, 125 U. S. 680, 49 Ark. 325; Mayor, etc., Mobile v. Yule, 3 Ala. 140; Waterworks v. Schottler, 111 U. S. 347; State v. Goodwill, 33 W. Va. 179.

[105] Frorrer v. People, 141 Ill. 171.

[106] House of Lords, 3 Bing. 193. See section on Usury. Also see generally on the subject of Usury, Tuler on Usury, 61; Dunlap v. Gould, 16 Johns. 377.

GAME—PROHIBITION OF SALE—CONSTITUTIONALITY.

STATE v. SHATTUCK.

Supreme Court of Minnesota, October 20, 1905.

Section 45, ch. 336, p. 606, Laws 1903, which provides that "no person shall * * * sell to any one * * * at any time any * * * ruffed grouse," construed, and held, that the statute applies to all ruffed grouse, whether captured within or without this state, and, further, that, so construed, it is not in conflict with the constitution of the United States.

START, C. J.: The defendants on April 4, 1905, were convicted in the municipal court of the city of Minneapolis of the alleged offense of selling on December 4, 1904, a certain game bird, known as "ruffed grouse." They appealed from the judgment, and here urge two reasons why it should be reversed. The material provisions of the statute upon which the conviction is based are as follows: "No person shall * * * sell to any one, have in possession with intent to sell or have in possession or under control, at any time any * * * ruffed grouse, * * * except that any ruffed grouse * * * or pheasant may be killed and had in possession between the 15th day of October and the 15th day of December following, * * * and when any of the birds mentioned in this section have been lawfully caught, taken, killed or had in possession during the time herein allowed they may be had in possession for the five days after the time herein allowed." Laws 1903, p. 606, ch. 336, § 45. It appears from the record that on December 5, 1904, Mr. Samuel F. Fullerton, with some other gentlemen, went to the Nicollet Hotel Cafe in Minneapolis, of which the defendants were the proprietors, and upon their request they were served by the servants of the defendants with a ruffed grouse. This particular bird was killed in the state of Wisconsin, brought into the state of Minnesota, thereafter came to the possession of the defendants, and was kept in the storeroom of their cafe until sold as stated.

1. The first reason urged why the judgment should be reversed is that the statute in question does not apply to wild game brought into this state from another state. The manifest purpose of the statute is to protect the game of this state, and not that of any other state; but the legislature, in the exercise of its police powers, might well conclude that a reasonable and effective method of protecting the ruffed grouse of this state would be to prohibit within the state the sale of such game, without reference to the state wherein it was captured. Or, in other words, the intention of this statute was to absolutely prohibit trafficking in such game within the state, leaving those who desire it for their pleasure or personal use free to go and capture it, at such times and subject to such reasonable limitations as the legislature might prescribe. It is not to be doubted that, if commercialism be eliminated by prohibiting the sale of game within the state, all motive would be removed for hunters for revenue only to engage in the business of killing game in such quantities as to extinguish the species in the course of a few years. Such a prohibition, therefore, is a potent protection to the game of our state. If, however, such protection be limited to game captured in this state, its purpose would be in a large measure defeated; for, when commingled, game of the same kind captured in this and other states cannot be readily, if at all, distinguished. Hence, to make the closing of the market for game an efficient method of protecting game of our own state, the prohibition must extend to all game; for, if the market be closed to the game of this state and left open to the game of other states, it would not be difficult to defeat the purpose of the statute by evasion, fraud, and lying. This statute, then, unless the language in which it is expressed forbids, must be construed so as to give effect to the purpose for which it was enacted and not so as to defeat it. The language is this: "No persons shall

sell to any one at any time any ruffed grouse." This clear and precise prohibition extends to all ruffed grouse, and we cannot construe the statute so as to exclude from its operation game killed in other states and brought into this state and here sold, without disregarding, not only the manifest purpose of the statute, but also its unequivocal language. The statute means just what it says.

Counsel for the defendants cite and rely upon the following cases: People v. O'Neil, 71 Mich. 325, 39 N. W. Rep. 1; Commonwealth v. Wilkinson, 139 Pa. 298, 21 Atl. Rep. 14; Commonwealth v. Hall, 128 Mass. 410, 35 Am. St. Rep. 387. The statute of Michigan construed in the first case cited prohibited the sale of "any of the kinds or species of birds protected by this act." It was the game of the state of Michigan which was protected by the act; hence it was necessarily held that the prohibition extended only to such game. The Pennsylvania statute provided that no person shall "kill or expose for sale or have in his or her possession after the same has been killed any quail," etc., and it was held in the second case cited that the prohibition against killing game was necessarily limited to game of the state, because the statute could not, and was not intended to have, any extraterritorial effect, and, further, that the clause, "after the same has been killed," referred to the same game that it was lawful to kill; that is, the game of the state. The statute of Massachusetts provided that "whoever in this commonwealth takes or kills any * * * ruffed grouse, * * * or sells, buys, has in possession or offers for sale any of said birds, shall upon conviction be punished by a fine of twenty dollars for each and every such bird." It was, in the last case cited, held that the statute had reference only to birds killed in "this commonwealth;" that is, in Massachusetts. It is clear that by reason of the difference in the statutes construed none of the cases cited is here in point. We hold that the statute prohibits the sale of ruffed grouse within this state, whether it was killed in this state or killed and brought from another state.

The statute as thus construed does not violate any of the provisions of our state constitution, as the defendants claim. Their contention is that the statute, if so construed, violates section 7, art. 1, of our constitution, in that it deprives them of their property without due process of law. The argument in support of this claim, briefly stated, is that the game in question was lawfully captured in the state of Wisconsin, and thereby became the absolute property of its captor and of those to whom he might sell it; hence it was their private property, lawfully obtained and held by a title which was independent of this state, at the time they sold it. Therefore any law which forbids such a sale of their private property within this state deprives them of their property without due process of law. The argument seems plausible, but it is unsound in principle; for when private property is brought from one state into another state, and becomes a part of the mass of property thereof, the police power of that state attaches to it, precisely as it does to like property originally therein. The title to all wild game is in the state, in trust for the citizens thereof, and is not subject to private ownership, except upon such conditions and limitations as the state may impose, in the exercise of its police powers, for the protection of such game. While such power cannot be extended to game in another state, yet if it is voluntarily brought into this state, and it is reasonably necessary to then subject it to the same police regulations as apply to game captured within this state, in order to prevent the extinction of game in this state, the legislature has the undoubted right to do so. Subjecting such game to the same limitations and restrictions as are applied to like game captured within the state does not deprive the owner thereof of his property without due process of law; for he voluntarily brings his property into this state, with knowledge of such restrictions, which are necessary for the protection of the property of the state. The effect of many valid police regulations is to restrict and impair rights of property, but in such cases private interests must yield to public interests. The conclusion we have reached is supported by the great weight of judicial authority. State v. Rodman, 58 Minn. 393, 59 N. W. Rep. 1098; State v. Northern Pacific Ex. Co., 58 Minn. 403, 59 N. W. Rep. 1100; State v. Chapel, 63 Minn. 535, 65 N. W. Rep. 940; State v. Poole (Minn.), 100 N. W. Rep. 647; Geer v. Connecticut, 161 U. S. 519, 16 Sup. Ct. Rep. 600, 40 L. Ed. 793; Magner v. People, 97 Ill. 320; *Ex parte* Maier, 103 Cal. 476, 37 Pac. Rep. 402, 42 Am. St. Rep. 129; People v. Bootman, 180 N. Y. 1, 72 N. E. Rep. 505.

2. This brings us to the second reason urged by the defendants for a reversal of the judgment, which is that the statute in question violates section 1, art. 14, of the amendments to the constitution of the United States, in that it deprives the owner of his property without due process of law; also section 8, art. 1, thereof, in that it is an interference with interstate commerce. The fourteenth amendment does not impair the police powers of the state. Barbier v. Connolly, 113 U. S. 31, 5 Sup. Ct. Rep. 357, 28 L. Ed. 923; Wisconsin Ry. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct. Rep. 115, 45 L. Ed. 194. It follows, then, that if, as we hold, the statute under consideration does not deprive the owner of the game, the sale of which is prohibited, of his property without due process of law, the statute is not in conflict with the fourteenth amendment. It is equally clear that the statute, as we have construed it, is not an interference with interstate commerce; for the game in question was at the time of the sale a part of the mass of property of this state and subject to the police powers of the state. If there was ever any doubt about this proposition, it is set at rest by the act of congress (Act May 25,

1900, ch. 553, 31 Stat. 187 [U. S. Comp. St. 1901, p. 290]), known as the "Lacey Act," which provides that "the dead bodies or parts thereof of wild game animals or game or song birds when transported into any state shall be subject to the laws of the state, enacted in the exercise of its police powers, to the same extent as if such game had been produced in such state, and shall not be exempt therefrom by reason of importation in original packages." This eliminates all questions of interstate commerce. People v. Bootman, 180 N. Y. 1, 72 N. E. Rep. 505.

Our conclusion is that the statute in question prohibits the selling of any ruffed grouse, whether it is captured within or without this state, and that, so construed, it is not in conflict with either the state or federal constitution.

Judgment affirmed.

NOTE.—*Recent Decisions on the Constitutionality of Game Laws.*—Game laws, or laws restricting the killing of wild animals, are increasing with the animal decrease in the population of our wild animal kingdom. Some of these restrictions, however, are so stringent that the question of whether such laws infringe the provisions of state or federal constitutions is becoming a serious one.

One of the phases of this questions has been discussed with absolute exhaustiveness and peculiar clearness of reasoning by Mr. Eugene F. Law, of Port Huron, Michigan, in 60 Cent. L. J. 324, where he limits his discussion to the following question: "The Power of a State to Forbid the Traffic in or the Possession of Wild Game and Fish when Brought in from Another State or County as Affecting Interstate Commerce." This article will prove of great value to anyone interested in the subject of the constitutionality of game laws where such laws interfere with interstate commerce.

We shall here take occasion, however, to refer some of the very recent cases. Thus, take the game law of Illinois, Hurd's Rev. St. 1903, ch. 61, § 25, which provides that no person shall at any time hunt, pursue, or kill with gun any protected game during any part of the year without first having procured a license so to do, and then only during the respective periods of the year when it shall be lawful; that an applicant for a license, if a non-resident shall pay to the county clerk $15.00, and, if a resident, $1.00, as a license fee. Other sections limit the hunting season, manner of killing, and amount of game to be killed or taken. Section 32 contains the proviso that nothing contained in this act shall apply to persons hunting on the land of another person by invitation of such land owner. When this act came before the Supreme Court of Illinois, that court held that section 32 is invalid, in so far as it authorizes a person to do, at the invitation of a land owner, what the landowner could not do himself. Cummings v. People, 211 Ill. 392, 71 N. E. Rep. 1031.

The Colorado Appellate Court has just held that a statute making the possession of game unlawful, unless permission therefor is shown, is valid, where the legislature of the state has vested the ownership of game in the state as proprietor.

In New York it has been held that the game law of that state prohibiting any one from having certain classes of birds in his possession, in so far as it provides penalties for the possession of snow buntings which one had when the act went into effect, where such possession was lawful previous to that time, is unconstitutional, as a confiscation of private property without compensation. People v. Cohen, 86 N. Y. Supp. 475.

BOOK REVIEW.

FEDERAL STATUTES, ANNOTATED, VOL. 7.

One scarcely conceives the extent to which the United States government has by legislation, entered into and interfered with the business and private interests of the citizens of the various states, until he picks up a volume of that new and well edited work entitled "Federal Statutes, Annotated," the seventh volume of which is just out and is now on our desk for review. This volume is the last of the series treating of statute law as the subject matter, arranged in alphabetical subdivisions included within the subjects of "Searches and Seizures" and "Yachts." Between these titles are discussed among others the following subjects of federal legislation: Seduction, Seeds, Shipping and Navigation, Smithsonian Institute, Smuggling, Stamps, State Department, Sugar Bounties, Supreme Court, Surety Companies, Swamp Lands, Taxation, Telegraph, Telephone, Cable and Electric Lines, Terms of Court, Territorial Courts, Timber Lands and Forest Reserves, Tonnage Duties, Town Sites, Trade Marks, Trade Unions.

Volume 8 of this series is a useful compendium of other federal enactments and executive manifestos. It contains the Declaration of Independence, the Articles of Confederation, the Ordinance for the Government of the Northwest Territory, the Constitution of the United States, the Amendments to the Constitution, an analytical index to the Constitution, a monograph on the growth of the Constitution in the Federal Convention of 1787, an article on Constitutional Construction and Interpretation, and, finally, a splendid system of annotations on the various provisions of the constitution and its amendments.

This compilation of federal statutes and constitutional provision is, in addition to the accessibility of its arrangement, carefully and exhaustively annotated, all of which, it is needless to say, makes them of considerable practical value to the profession.

Published by the Edward Thompson Company, Northport, N. Y.

BOOKS RECEIVED.

A Treatise on the Law of Crimes. By Wm. L. Clark and Wm. L. Marshall. Second Edition, by Herschel Bouton Lazell. St. Paul. Keefe-Davidson Co., 1905. Sheep, pp. 940. Price $6.00. Review will follow.

A Selection of Cases on Domestic Relations and the Law of Persons. By Edwin H. Woodruff, Professor of Law in the College of Law, Cornell University. Second Edition, Enlarged. New York. Baker, Voorhis & Company, 1905. Canvas, pp. 639. Price $5.00. Review will follow.

Bender's National Lawyers' Diary, 1906. From January 1, 1906, to February 1, 1907. Published Annually. Third Year. Price $2.00. Albany, N. Y. Matthew Bender and Company, 1905.

The Law of Fire Insurance. By George A. Clement, of the New York Bar. Editor of the New York Annotated Code of Civil Procedure and Fire Insurance Digest. In two volumes. Vol. 1, as a valid contract in event of fire and adjustment of claims thereunder. Vol. 2, as a void contract, and in both volumes the conditions of the contract as affected by construction, waiver, or estoppel. Including miscellaneous provisions, and an analysis and comparison of the various standard forms, all reduced to rules, with the relevant statutory provisions of all the states. New York. Baker, Voorhis & Company, 1905. Sheep, pp. 924. Price $6.30. Review will follow.

HUMOR OF THE LAW.

The Court (Judge Kavanagh). I will allow you $480 for your services in the matter.

Attorney. If your honor please, I think my bil should be allowed in full—$600. Probably your honor has omitted a very important item, the work done on Sunday.

The Court. I did not count that. You should have been attending to your religious duties on that day.

Attorney. I esteemed it a religious duty to defeat these scoundrels.

The Court. For that you get your reward hereafter. Mr. Clerk, enter the attorney's compensation "480 here, $120 in heaven."

Attorney. But, your, honor, what security have I that the order will be there recognized?

Court. Never mind; I will be there, and if necessary I will have you sent for.—*Chicago Inter-Ocean.*

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ALIENS—Deportation of Chinese Wife.—The marriage of a Chinese slave girl, whose entry into the United States was secured by fraud, to a Chinese laborer resident in this country, held no defense to proceedings for her deportation.—United States v. Ah Sou, U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 775.

2. AMBASSADORS AND CONSULS—Liability of Surety on Bond.—The surety on the bond of a consular officer cannot be held liable for the statutory penalty incurred by the principal, under Rev. St., § 1728, for charging excessive fees, where such fees, including the excess, have been charged against him in his account and paid to the treasury department.—United States v. Ballantine, U. S. C. C. of App., Second Circuit, 138 Fed. Rep. 312.

3. APPEAL AND ERROR—Assignments of Error.—Action of master commissioner in rulings on evidence held not assignable as error, but merely refusal of the court to correct any error therein.—St. Joseph Mfg. Co. v. Hubbard, Ind., 75 N. E. Rep. 17.

4. APPEAL AND ERROR—Grounds for Dismissal.—It is not ground for the dismissal of an appeal that decrees in other suits between the parties involving the same issues were entered subsequent to the one appealed from and based upon that decree, from which no appeals were taken.—Copper River Min. Co. v. McClellan, U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 333.

5. APPEAL AND ERROR—Motion to Dismiss.—A motion to dismiss because the appellant had obtained all the relief demanded, involving the merits, will be continued until submission of the appeal on the merits.—Multnomah County v. White, Oreg., 81 Pac. Rep. 888.

6. APPEAL AND ERROR—Order Directing Verdict.—Where a verdict is directed for defendant, the question on appeal is whether, considering all the evidence in plaintiff's favor is true, it fails to make a *prima facie* case.—Robinson v. Ward, Mich., 104 N. W. Rep. 378.

7. BANKRUPTCY—Alias Citation.—Where appellant's counsel made no application for an alias citation to bring in necessary parties to an appeal until two full terms had elapsed and the appeal had become inoperative as to them, the defect could not be cured.—Gray v. Grand Forks Mercantile Co., U. S. C. C. of App., Eighth Circuit, 138 Fed. Rep. 344.

8. BANKRUPTCY—Claims Against Estate.—Where a claim against a bankrupt's estate was in proper form and duly verified, except in particulars waived, the burden of proof was shifted to the objectors.—*In re* Carter, U. S. D. C., W. D. Ark., 138 Fed. Rep. 846.

9. BANKRUPTCY—Effect of Filing Petition.—The filing of a bankruptcy petition and a bankruptcy adjudication held not to prevent existing creditors from proceeding to reduce their claims to judgment and execution against the holder of an unfiled chattel mortgage executed by the bankrupt.—*In re* Beede, U. S. D. C., W. D. N. Y., 138 Fed. Rep. 441.

10. BANKRUPTCY—Objections to Discharge.—A bankrupt, though entitled to file papers in resistence of specifications against his discharge, is not bound to do so.—*In re* Hendrick, U. S. D. C., D. Conn., 138 Fed. Rep. 473.

11. BANKRUPTCY—Title to Uncompleted Vessels in Shipyard.—The title to vessels which at the time of bankruptcy were in the bankrupt's shipyard in various stages of construction under contracts requiring payments to be made as the work progressed, which had been made, and providing that title should vest as such payments were made, held to be in the several petitioners for whom the vessels were being built.—*In re* MacDonald, U. S. D. C., D. Conn., 138 Fed. Rep. 463.

12. BILLS AND NOTES—Principal and Agent.—An agent who purchases a note with his principal's money, and has it indorsed to himself, may sue thereon in his own name.—Routh v. Kostachek, Okla., 81 Pac. Rep. 429.

13. CHATTEL MORTGAGES—Failure to File.—Where a chattel mortgage, executed and delivered, was not filed within a reasonable time, and possession was not delivered, the mortgage was void as to all creditors of the mortgagor when existing or becoming such while the mortgage remained unfiled.—*In re* Beede, U. S. D. C., N. D. N. Y., 138 Fed. Rep. 441.

14. COLLISION—Tugs and Tows Meeting.—Two tugs, each with two scows in tow tandem on long hawsers, both held in fault for a collision between the tows when meeting in upper New York Bay.—The Bee, U. S. C. C. of App., Second Circuit, 138 Fed. Rep. 303.

15. COMMERCE—Findings of Commissions.—The mere opinions of the interstate commerce commission are inadmissible in an action brought for the enforcement of an order of pecuniary reparation.—Western New York & P. R. Co. v. Penn Refining Co., U. S. C. C. of App., Third Circuit, 137 Fed. Rep. 343.

16. CONTRACTS—Conclusive Effect of Engineer's Final Acceptance.—To destroy conclusive character of engineer's estimate of the amount and character of the work, gross mistakes imply bad faith.—Guild v. Andrews, U. S. C. C. of App., Eighth Circuit, 137 Fed. Rep. 369.

17. CONTRACTS—Non-negotiable Instruments.—A non-negotiable instrument, not under seal and containing no recital of a consideration, does not import one.—Joseph v. Catron, N. Mex., 81 Pac. Rep. 489.

18. COUNTIES—Enjoining Letting of Contract to Build Court-House.—Taxpayer may enjoin county board of commissioners from contracting to build a court-house, for which no valid appropriation has been made.—State v. Board of Comrs. of Newton County, Ind., 74 N. E. Rep. 1091.

19. DEATH—Measure of Damages.—Under a statute authorizing a recovery for wrongful death, a recovery held limited to the pecuniary assistance the jury believes the next of kin would have received from deceased, had he lived.—Hirschkovitz v. Pennsylvania R. Co., U. S. C. C., S. D. N. Y., 138 Fed. Rep. 438.

20. DEEDS—Reservations.—A reservation of a right of way in a deed held inoperative, because attempting to reserve a right of way over land having no existence in fact.—O'Neil v. Potter, Mich., 104 N. W. Rep. 396.

21. EMINENT DOMAIN—Damage by Railroad Embankment.—A person excluded from a city lot by an embankment constructed by a railway company on its right of way held entitled to recover the damages sustained.—Hyman v. Ann Arbor R. Co., Mich., 104 N. W. Rep. 376.

22. EQUITY—Oral Examination of Foreign Witness.—Where complainants' notice for taking testimony signifies a desire that the testimony be taken orally, defendants would be permitted to cross examine complainant's foreign witness orally.—Edison Electric Co. v. Westinghouse, Church, Kerr & Co., U. S. C. C., D. N. J., 138 Fed. Rep. 460.

23. EVIDENCE—Competency of Witness as to Value.—In replevin, a witness, stating that she knew the cost of the articles and their value, was competent to testify as to the values.—Glass v. Buttner, Wash., 81 Pac. Rep. 699.

24. EVIDENCE—Foreign Judgments.—Foreign justice's judgment, certified in accordance with Code, § 4646, is properly authenticated for use in the courts of this state, regardless of the statutory provisions of the foreign state.—Morrison Mfg. Co. v. Rimerman, Iowa, 104 N. W. Rep. 279.

25. EVIDENCE—Negligent Railroad Fires.—Question of expert as to escape of fire above the netting in the front of an engine held competent.—German Ins. Co. v. Chicago & N. W. Ry. Co., Iowa, 104 N. W. Rep. 361.

26. FORCIBLE ENTRY AND DETAINER—Action to Recover Possession.—An action of right to recover possession of real estate will only lie on behalf of one holding the legal title, with right to immediate possession.—Marks v. McGookin, Iowa, 104 N. W. Rep. 378.

27. FRAUDS, STATUTE OF—Executory Contract.—An executory contract to purchase certain land, void under the statute of frauds, held insufficient to sustain an estoppel to preclude the vendee from acquiring an adverse title.—Ball v. Harpham, Mich., 104 N. W. Rep. 353.

28. HABEAS CORPUS—Commitment by Legislative Committee.—A legislative committee, improperly appointed, held without jurisdiction to incarcerate a witness for his refusal to appear in obedience to a subpœna.—*Ex parte* Caldwell, U. S. C. C., N. D. W. Va., 138 Fed. Rep. 487.

29. HABEAS CORPUS—Commitment Under Civil Process.—A writ of *habeas corpus* may be issued out of the federal courts to inquire into the cause of a commitment under a civil, as well as a criminal, process.—*Ex parte* Caldwell, U. S. C. C., N. D. W. Va., 138 Fed. Rep. 487.

30. JUDGMENT—Suit to Set Aside for Collusion.—The exploitation of a collusive decree adjudging the validity of a void patent does not entitle one not a party to have the same set aside after a number of terms have passed, nor to injunctive relief.—Union Waxed & Parchment Paper Co. v. Sevigne Bread Wrapper Co., U. S. C. C., D. Ver., 138 Fed. Rep. 415.

31. MASTER AND SERVANT—Liens.—A distiller employed at a monthly wage held not entitled to a common-law lien on brandy distilled for the amount due him for wages and for fruit sold by him to his employer.—Michaelson v. Fish, Cal., 81 Pac. Rep. 661.

32. MUNICIPAL CORPORATIONS—Bona Fide Purchasers of Bonds.—*Bona Fide* purchasers of municipal bonds take with notice of the law under which the bonds were issued.—Wright v. East Riverside Irr. Dist., U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 313.

33. MUNICIPAL CORPORATIONS—Change of Street Grade.—Where a change of street grade will result in damage, it is proper to consider the cost of adjusting the property and buildings to the new grade, together with damages to trees, etc.—City of Seattle v. Board of Home Missions of Methodist Protestant Church, U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 307.

34. MUNICIPAL CORPORATIONS—Special Injury by Abandonment of Street.—One whose property rights will be injuriously affected by the unauthorized abandonment of a street can sue to prevent the infliction of any special injury.—Coker v. Atlanta, K. & N. Ry. Co., Ga., 51 S. E. Rep. 481.

35. PARTNERSHIP—Actions Against Copartners.—Neither an individual partner nor a purchaser of his interest can sue the copartners at law to recover such individual's share of the firm assets.—Doll v. Hennessy Mercantile Co., Mont., 81 Pac. Rep. 625.

36. REFERENCES—Exceptions to Report and Findings.—A general exception to "report and findings" of master held insufficient.—St. Joseph Mfg. Co. v. Hubbard, Ind., 75 N. E. Rep. 17.

37. REFERENCE—Form of Taking Testimony.—Under the Code of Alaska, an order of reference need not require that the witnesses who testify before the referee shall read over and subscribe their testimony.—Copper River Min. Co. v. McClellan, U. S. C. C. of App., Ninth Circuit, 138 Fed. Rep. 333.

38. STATUTES—Amendment of Charters.—Act Feb. 20, 1902 (23 St. at Large, p. 1168), incorporating a union depot company, held not a violation of Const. art. 9, § 2, prohibiting the amendment of railroad charters by special act.—Riley v. Charleston Union Station Co., S. Car., 51 S. E. Rep. 485.

39. TAXATION—Suit to Set Aside Tax Deed.—In a suit to set aside a tax deed, costs would not be awarded to either party, where it was determined that the deed was void, because the property was not subject to assessment.—Barnes v. Bee, U. S. C. C., N. D. W. Va., 138 Fed. Rep. 476.

40. TRADE UNIONS—Breach of Contract.—A suit for breach of contract by an unincorporated local labor union held improperly brought against four of its members, individually and for themselves and others as officers and members of the union.—Ehrlich v. Willenski, U. S. C. C., E. D. Penn., 138 Fed. Rep. 425.

41. TRADE MARKS AND TRADE NAMES—Right of Part Purchaser to Appropriate Name of Springs.—A purchaser of a portion of lands, on which were springs known as "Healing Springs," held not entitled to the exclusive use of such name as against a purchaser of the balance of the land and springs.—Virginia Hot Springs Co. v. Hegeman & Co., U. S. C. C., S. D. N. Y., 138 Fed. Rep. 855.

42. TRUSTS—Transactions with Beneficiaries.—Where sale of property from trustee to beneficiaries was conducted fairly, beneficiaries could not, after lapse of four years, repudiate the transaction and have the sale set aside.—Skelding v. Dean, Mich., 104 N. W. Rep. 410.

43. WATERS AND WATER COURSES—Irrigation.—An appropriator of water cannot increase the amount to which he is entitled by using an amount in excess of his appropriation.—Sayre v. Johnson, Mont., 81 Pac. Rep. 389.

44. WATERS AND WATER COURSES—Negligence Causing Injury to Mill.—A miller, compelled to shut down his mill by reason of defendant's negligence, held entitled to damages.—Michigan Paper Co. v. Kalamazoo Valley Electric Co., Mich., 104 N. W. Rep. 387.

45. WILLS—Residuary Clause.—Under a will, certain property held a part of the residuary estate in case an attempted disposition of it should be held void as creating a perpetuity.—O'Connor v. Murphy, Cal., 81 Pac. Rep. 406.

INDEX-DIGEST

TO THE EDITORIALS, NOTES OF RECENT DECISIONS, LEADING ARTICLES, ANNOTATED CASES, LEGAL NEWS, CORRESPONDENCE AND BOOK REVIEWS IN VOLUME 61.

A separate subject-index for the "Digest of Current Opinions" will be found on page 505, following this Index-Digest.

SUBJECT-INDEX

TO ALL THE "DIGESTS OF CURRENT OPINIONS" IN VOL. 61.

This subject-index contains a reference *under its appropriate head* to every digest of current opinions which has appeared in the volume. The references, of course, are to the pages upon which the digest may be found. There are no cross-references, but each digest is indexed herein under that head, for which it would most naturally occur to a searcher to look. It will be understood that the page to which reference, by number, is made, may contain more than one case on the subject under examination, and therefore the entire page in each instance will necessarily have to be scanned in order to make effective and thorough search.